**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**APPEAL FROM ORDER NO.1092 OF 2004**

Pramod Ratnchandra Baldota ...Appellant

Vs.

Municipal Corporation of
Greater Bombay ...Respondent

Mr. R.A.Thorat for the Appellant
Mr. J.Xavier for the Respondent-B.M.C..

**CORAM: A.S.OKA, J.**
**DATED: JANUARY 17, 2005.**

**P.C.:**

1. Admit. The learned Counsel for the Respondent waives service. By the impugned Judgment and Order dated 3rd December 2004 the learned Trial Judge has declined to grant ad-interim relief in favour of the Appellant. The challenge in the suit filed by the Appellant is to the notice dated 30th November 2004 issued under Section 354-A of M.M.C.Act,1888. On the same day a detailed reply was submitted to the said notice by the Appellant through his Advocate.

2. The grievance of the learned Counsel for the Appellant is that in view of the Circular dated 11th August 2000 issued by the Respondent-Corporation and as reply to the notice under Section 354-A was submitted on the very same day, the Competent Authority ought to have passed a reasoned order. He therefore submitted that the impugned action was illegal being in contravention of the circular.

3. The learned Counsel for the Respondent did not dispute that the circular is applicable to the facts of the case. He therefore stated that the Assistant Commissioner, F/North Ward of the Respondent-Corporation will consider the reply in accordance with law and will pass a reasoned order in terms of the said circular.

4. Shri Thorat, learned Counsel for the Appellant states that till a reasoned order is passed by the Assistant Commissioner and for a period of 15 days thereafter, status quo as of today in respect of the structure be ordered to be maintained. He states that if the Assistant Commissioner is to pass a reasoned order, he may be permitted to withdraw the suit with liberty to file a fresh suit, in case the order is adverse to the Appellant.

5. In view of this submission, I pass the following order :

i) L.C.Suit No.5614 of 2004 is dismissed as withdrawn with no order as to costs.

ii) The Assistant Commissioner, F/North Ward of the Respondent-Corproation will consider the reply dated 30th November 2004 submitted by the Appellant and will pass a reasoned order within four weeks from today.

iii) Till order is passed by the Assistant Commissioner and for further period of two weeks from the date of communication of the said order, both the parties will maintain status quo in respect of the suit structure. It is made clear that this order of status quo will not prevent the Respondent from taking action against the disputed structure in accordance with any other provisions of law.

iv) Appeal is disposed of in above terms with no order as to costs.

v) All questions on merit are kept open.

**Judge.**